



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 18, 2013

Ms. Melanie J. Rodney
Assistant County Attorney
Harris County Attorney's Office
2525 Holly Hall, Suite 190
Houston, Texas 77054

OR2013-01129

Dear Ms. Rodney:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 476950 (CA File No. 12HSP0812).

The Harris County Hospital District d/b/a Harris Health System (the "system") received a request for "a copy of the prior job to job 12/0280, along with vendor responses and [the] winning bid, for Certification of Pending Medicaid Cases and Other Related Third Party Sources[.]" Although you take no position as to whether the submitted information is excepted under the Act, you inform us the release of this information may implicate the proprietary interests of Cardon Healthcare Network, Inc.; Chamberlin Edmonds; Eagle's Nest Revenue Enhancement, Inc.; e-Scan Data Systems, Inc.; HCFS, Inc.; MedAssist, Inc.; Medical Advocacy for Healthcare, Inc.; Medical Capital Recovery, Inc.; and Resource Corporation of America (collectively, the "third parties"). Accordingly, you notified the third parties of the request for information and of their right to submit arguments to this office as to why the submitted information should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in Act in certain circumstances). We have reviewed the submitted information.

Initially, you inform us some of the submitted information was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2009-09619 (2009). In that ruling, we determined the information we marked must be withheld under sections 552.110 and 552.136 of the Government Code and the remaining

information must be released in accordance with copyright law. You seek to rely on the prior ruling, informing us some of the information submitted in response to the instant request for information is identical to the information ruled on in Open Records Letter No. 2009-096219. However, we note the previous request for information was submitted to the Harris County Purchasing Agent (the "county"), while the instant request was submitted to the system. These are two different governmental bodies. Therefore, the system may not rely on our previous ruling to the county as a previous determination for the information at issue. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

Next, we note an interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) to submit its reasons, if any, as to why information relating to that party should be withheld from public disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, none of the third parties have submitted comments to this office explaining why the submitted information should not be released. Therefore, we have no basis to conclude any of the third parties have a protected proprietary interest in this information. *See id.* § 552.110; Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, that release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3. Accordingly, the system may not withhold any portion of the submitted information based upon the proprietary interests of the third parties.

We note a portion of the submitted information is subject to section 552.101 of the Government Code in conjunction with section 6103(a) of title 26 of the United States Code.¹ Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information other statutes make confidential. Prior decisions of this office have held section 6103(a) of title 26 of the United States Code renders tax return information confidential. *See* Attorney General Opinion H-1274 (1978) (tax returns). Section 6103(b) defines the term "return information" as "a taxpayer's identity, the nature, source, or amount of his income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, tax withheld, deficiencies, overassessments, or tax payments . . . or any other data, received by, recorded by, prepared by, furnished to, or collected by the Secretary [of the Internal Revenue Service] with respect to a return or with respect to the determination of the existence, or possible existence, of liability . . . for any tax, penalty, interest, fine, forfeiture, or other imposition, or offense[.]" 26 U.S.C. § 6103(b)(2)(A). Federal courts

¹The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

have construed the term "return information" expansively to include any information gathered by the Internal Revenue Service regarding a taxpayer's liability under title 26 of the United States Code. *See Mallas v. Kolak*, 721 F. Supp 748, 754 (M.D.N.C. 1989), *aff'd in part*, 993 F.2d 1111 (4th Cir. 1993). Thus, the submitted 1120S form, which we have marked, constitutes tax return information that is confidential under section 6103(a) of title 26 of the United States Code and must be withheld under section 552.101 of the Government Code.

We also note some of the remaining information is subject to section 552.136 of the Government Code. This section provides in part that "[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." Gov't Code § 552.136(b); *see also id.* § 552.136(a) (defining "access device"). This office has determined that insurance policy numbers are subject to section 552.136. *See Open Records Decision No. 684 at 9 (2009)*. Accordingly, the system must withhold the insurance account number and insurance policy numbers we have marked under section 552.136 of the Government Code.

Finally, we note some of the information at issue may be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. *See Open Records Decision No. 180 at 3 (1977)*. A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *See id.*; *see also Open Records Decision No. 109 (1975)*. If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit.

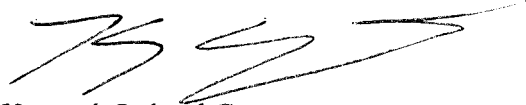
In summary, the 1120S form we have marked must be withheld under section 552.101 of the Government Code in conjunction with section 6103(a) of title 26 of the United States Code. The system must withhold the insurance account number and insurance policy numbers we have marked under section 552.136 of the Government Code. The system must release the remaining information, but any information protected by copyright may only be released in accordance with copyright law.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public

information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free at (888) 672-6787.

Sincerely,



Kenneth Leland Conyer
Assistant Attorney General
Open Records Division

KLC/bhf

Ref: ID# 476950

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Office of General Counsel
Resource Corporation of America
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Clear Lake Shores, Texas 77565
(w/o enclosures)

Office of General Counsel
HCFS, Inc.
14285 Midway Road, Suite 280
Addison, Texas 75001
(w/o enclosures)

Office of General Counsel
Medical Capital Recovery, Inc.
1216 East 6th Street
Austin, Texas 78702
(w/o enclosures)

Office of General Counsel
e-Scan Data Systems, Inc.
1216 East 6th Street
Austin, Texas 78702
(w/o enclosures)

Office of General Counsel
Chamberlin Edmonds
14 Piedmont Center NE, Suite 500
Atlanta, Georgia 30346
(w/o enclosures)

Office of General Counsel
Eagle's Nest Revenue Enhancement, Inc.
18414 Bivens Bend
Spring, Texas 77379
(w/o enclosures)

Office of General Counsel
Cardon Healthcare Network
Suite 100
25231 Grogan's Mill Road
The Woodlands, Texas 77380
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Office of General Counsel
MedAssist, Incorporated
Greenway Tower
1231 Greenway Drive, Suite 960
Irving, Texas 75038
(w/o enclosures)

Office of General Counsel
Medical Advocacy for Healthcare
The Mash Program
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1227 West Magnolia Avenue
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